144-310

RECORD, CASE NO. 14928.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM NO. 1454.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

GEORGE SANGES, DENNIS ALEXANDER, ISAAC SMITH, AND CHARLES PORTER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

FILED NOVEMBER 9, 1891.

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a UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the judges of the circuit court of the United States for the northern district of Georgia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between the United States, plaintiff, and George Sanges, Dennis Alexander, Isaac Smith, and Charles Porter, defendants, a manifest error hath happened, to the great damage of the said plaintiff, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 28th day of October, in the year of our Lord one thousand eight hundred and ninety-one.

[SEAL.] JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by

L. Q. C. LAMAR,
Associate Justice, Supreme Court U. S.

b UNITED STATES OF AMERICA, ss:

The President of the United States to George Sanges, Dennis Alexander, Isaac Smith, and Charles Porter, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Georgia, wherein the United States is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Lucius Q. C. Lamar, associate justice of the Supreme Court of the United States, this 28th day of October, in the year of our Lord one thousand eight hundred and ninety-one.

L. Q. C. LAMAR,
Associate Justice of the Supreme Court, U. S.

c On this seventh day of November, in the year of our Lord one thousand eight hundred and ninety-one, personally appeared B. B. Landers before me, the subscriber, being a United States deputy marshal in and

for the northern district of Georgia, and makes oath that he delivered a true copy of the within citation to William C. Glenn, of the firm of Glenn & Maddox, attorneys for defendants, on November 6th, 1891, and also to defendants personally except George Sanges, who was served at his residence on November 7th, 1891.

B. B. LANDERS,
U. S. Deputy Marshal.

Sworn to and subscribed the seventh day of November, A. D. 1891.
[SEAL.] O. C. FULLER,
Commissioner of the Circuit Court of the United States
For Nor. Dist. of Ga

1 *Indictment.*

THE UNITED STATES OF AMERICA,
Northern District of Georgia:

In the circuit court of the United States within and for the northern district of Georgia. October term, 1890.

In the name and by the authority of the United States of America.

The grand jurors of the United States within and for the district aforesaid, at Atlanta, in said district, duly selected, impannelled, sworn, and charged to inquire into and true present make of all crimes and offenses cognizable under the authority of the United States, committed within said northern district of Georgia, upon their oath present, in open court, that on the eleventh day of November, anno Domini eighteen hundred and ninety (11th November, 1890), one Joseph Wright, near Marietta, in the county of Cobb, in the district aforesaid, was then and there a citizen of the United States, and was then and there returning to his home in Cobb County from Atlanta, having, while in Atlanta, appeared as a witness and testified on said date before the United States grand jury for said northern district of Georgia, then and there legally sitting and clothed with power to inquire into and true present make of all crimes committed in said northern district of Georgia against the laws of the United States,

2 as to violations of the internal-revenue laws of the United States by one William Teasley and Dennis Alexander, who were respectively and severally charged with carrying on the business of retail liquor dealers within said district on the tenth of November, 1889, first of April, 1890, 1st of July, 1890, and 20th of October, 1890, without having paid the special tax as required by law—the said Joseph Wright having come from his home in Cobb County to Atlanta before said United States grand jury on the 10th and 11th of November, 1890, in response and in obedience to subpœnas commanding him to appear as a witness for the United States against said Teasley and Alexander, and against each of them respectively, to wit, said William Teasley and Dennis Alexander. That thereafter, on to wit, the day first aforesaid, 11th of November, 1890, while the said Joseph Wright was still said witness under said subpœnas from the said United States court, one George Sanges, Dennis Alexander, Isaac Smith, and Charles Porter, together with divers other evil-disposed persons, whose names are to the grand jurors aforesaid unknown, did then and there combine, conspire, and confederate by and between them-

selves with force and arms to injure and oppress him, the said Joseph Wright, in the free exercise and enjoyment of a right and privilege then and there secured to him, the said Joseph Wright, by the Constitution and laws of the United States; and because he, the said Joseph Wright, was then and there in the free exercise and enjoyment of
3 said right and privilege, to wit, the right and privilege as a citizen of the United States to inform the proper officers of the United States of violations of its internal revenue, and of attempts to defraud the United States by the said William Teasley and Dennis Alexander, and the right and privilege of a citizen of the United States to aid in preventing such attempts to defraud the United States of its revenues and to prosecute such cases, and the right, privilege, and duty of said Wright, as a citizen of the United States to obey the process of its courts and to comply with and answer the subpœnas of said United States court, and in obedience thereto to appear and testify as a witness freely, fully, and truthfully before said United States grand jury in Atlanta for the northern district of Georgia to any matter pending therein criminating and tending to criminate said William Teasley, said Alexander, and any other persons for violating the internal-revenue laws of the United States, and return to his home in peace and safety after so testifying, and the right and privilege of the said Joseph Wright, as a citizen of the United States, to be secure, safe, and unmolested in his person and exempt from violence for having exercised and enjoyed the said rights, privileges, and immunities hereinbefore enumerated, secured to him, the said Joseph Wright, as a citizen of the United States, by the Constitution and laws of the United States. And they, the said George Sanges, Dennis Alexander, Isaac Smith, and Charles Porter, together with divers other evil-disposed persons,
4 having so combined, conspired, and confederated, did thereafter, in pursuance of such combination and conspiracy, on, to wit, the day first aforesaid, in the county of Cobb, in the district aforesaid, to wit, on the 11th of November, 1890, at night, then and there go on the highway, and then and there assault him, the said Joseph Wright, with deadly weapons, to wit, with pistols, then and there loaded with gunpowder and leaden bullets, and did then and there discharge the said deadly weapons to, at, and against him, the said Joseph Wright, and did wound and maim him, the said Joseph Wright; and they, the said George Sanges, Dennis Alexander, Isaac Smith, and Charles Porter, in pursuance of said conspiracy, and while then and there in the prosecution of said conspiracy as aforesaid, with force and arms, in and upon the body of said Joseph Wright, then and there in the peace of the United States, being feloniously, wilfully, and of their malice aforethought, and from a deliberate and premeditated design, unlawfully to effect the death of the said Joseph Wright, did then and there shoot off and discharge at and against him, the said Joseph Wright, loaded pistols, then and there loaded with gunpowder and leaden bullets, and by shooting off and discharging said loaded pistols as aforesaid, they, the said George Sanges, Dennis Alexander, Isaac Smith, and Charles Porter, did then and there wilfully and of their malice aforethought strike and penetrate the body of said Joseph Wright with leaden bullets, and did then and there inflict upon him, the said Joseph
5 Wright, mortal wounds, of which mortal wounds he, the said Joseph Wright, did then and there immediately die. And so the

grand jurors aforesaid do find and present on their oaths that the said George Sanges, Dennis Alexander, Isaac Smith, and Charles Porter did then and there feloniously and of their malice aforethought kill and murder the said Joseph Wright, then and there a citizen of and in the peace of the United States, while they, the said George Sanges, Dennis Alexander, Isaac Smith, and Charles Porter, and their other coconspirators, to the grand jurors unknown, were then and there prosecuting said conspiracy to injure and oppress the said Joseph Wright, with intent of them (the said conspirators) to prevent and hinder the said Joseph Wright in the free exercise and enjoyment of his said right and privilege as a citizen of the United States, then and there secured to him, the said Joseph Wright, by the Constitution and laws of the United States of America, as aforesaid, as such citizen of the United States, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

S. A. DARNELL,
U. S. Attorney.

A true bill, this 16th day of December, 1890.

DARWIN G. JONES,
Foreman of Grand Jury.

6 (Endorsement:) No. 3648. United States circuit court, Northern district of Georgia. October term, 1890. United States vs. George Sanges, Dennis Alexander, Isaac Smith, and Charles Porter, of Cobb County. §§ 5508–09. Conspiracy to injure and oppress a citizen of the United States in exercise of civil rights, and murder of said citizen. A true bill, this 16th day of December, 1890. Darwin G. Jones, foreman grand jury. Filed in clerk's office, 18 day of December, 1890. O. C. Fuller, clerk.

7 *Demurrer.*

THE UNITED STATES *vs.* GEORGE K. SANGES ET AL. } Indictment in the circuit court of the United States for the northern district of Georgia.

And now come the defendants, by their attorneys, Glenn & Maddox and John E. Mozley, and demur to the indictment in the above-stated case, and for cause of demurrer say:

First. Because the indictment does not follow the language of the statute upon which it is based, nor set out the charge of conspiracy in the words thereof.

Second. Because there is in the indictment no sufficient charge of the formation of any conspiracy on the part of these defendants, nor of the purpose for which this conspiracy was formed, nor of the objects thereof, nor of the means by which the same was to be effected.

Third. Because the charge of conspiracy is made in general terms, with no specification of the injury or oppression to be done by these defendants.

Fourth. Because there are no such rights or privileges secured to the party conspired against by the Constitution and laws of the United States as those set out in the indictment.

Fifth. Because on the facts alleged in said indictment there is no
8 crime or offense set out of which the courts of the United States can take cognizance.

Wherefore the defendants pray judgment and that by the court here they may be dismissed and discharged from the premises in said indictment specified.

GLENN & MADDOX,
JOHN F. MOZLEY,
Defts. Att'ys.

Filing: Filed in clerk's office 18th day of May, 1891. O. C. Fuller, clerk.

9 In the circuit court of the United States for the northern district of Georgia.

UNITED STATES, PLAINTIFF,
vs.
GEORGE SANGES, DENNIS ALEXANDER, Isaac Smith, and Charles Porter.

Before Lamar, circuit justice, and Newman, district judge.

At the October term of the United States circuit court for the northern district of Georgia the grand jury returned an indictment under sections 5508 and 5509, Revised Statutes of the United States, against the above-named defendants for conspiring to injure and oppress a citizen of the United States in the exercise of civil rights and for murder of said citizen.

The indictment charges: That on the eleventh day of November, anno domini eighteen hundred and ninety (11th November, 1890), one Joseph Wright, near Marietta, in the county of Cobb, in the district aforesaid, was then and there a citizen of the United States, and was then and there returning to his home in Cobb County from Atlanta, having, while in Atlanta, appeared as a witness and testified on said date before the United States grand jury for said northern district of Georgia, then and there legally sitting and clothed with the power to inquire into and true present make of all crimes committed in said northern district of Georgia against the laws of the United States, as to violations of the internal-revenue laws of the United States, by one William Teasley and Dennis Alexander, who were respectively and severally charged with carrying on the business of retail liquor dealers within said district, on the tenth of November, 1889, first of April, 1890, first of July, 1890, and twentieth of October, 1890, without having paid the special tax as required by law, the said Joseph Wright having come from his home in Cobb County to Atlanta before said United States grand jury on the 10th and 11th of November, 1890, in response and in obedience to subpœnas commanding him to appear as a witness for the United States against said Teasly and Alexander, and against each of them respectively, to wit, said William Teasley, and Dennis Alexander. That thereafter, on, to wit, the day first aforesaid
10 11th of November, 1890, while the said Joseph Wright was still said witness under said subpœna from the said United States court, one George Sanges, Dennis Alexander, Isaac Smith, and Charles Porter, together with divers other evil-disposed persons, whose names are to the

grand jurors aforesaid unknown, did then and there combine, conspire, and confederate by and between themselves, with force of arms, to injure and oppress him, the said Joseph Wright, in the free exercise and enjoyment of a right and privilege then and there secured to him, the said Joseph Wright, by the Constitution and laws of the United States, and because he, the said Joseph Wright, was then and there in the free exercise and enjoyment of said right and privilige, to wit, the right and privilege as a citizen of the United States, to inform the proper officers of the United States of violations of its internal revenue and of attempts to defraud the United States by the said William Teasley and Dennis Alexander, and the right and privilege of a citizen of the United States to aid in preventing such attempts to defraud the United States of its revenues, and to prosecute such cases, and the right, privilege, and duty of said Wright, as a citizen of the United States, to obey the process of its courts, and to comply with and answer the subpœnas of said United States court, and in obedience thereto to appear and testify as a witness freely, fully, and truthfully before said United States grand jury in Atlanta for the northern district of Georgia, to any matter pending therein, criminating and tending to criminate said William Teasley, said Alexander, and any other person for violating the internal-revenue laws of the United States, and return to his home in peace and safety after so testifying, and the right and privilege of said Joseph Wright as a citizen of the United States to be secure, safe, and unmolested in his person and exempt from violence for having exercised and enjoyed the said rights, privileges, and immunities hereinbefore enumerated, secured to him, the said Joseph Wright, as a citizen of the United States by the Constitution and laws of the United States; and they, the said George Sanges, Dennis Alexander, Isaac Smith, and Charles Porter, together with divers other evil-disposed persons, having so combined, conspired, and confederated, did thereafter, in pursuance of such combination and conspiracy, on, to wit, the day first
11 aforesaid, in the county of Cobb, in the district aforesaid, to wit, on the 11th of November, 1890, at night, then and there go on the highway and then and there assault him, the said Joseph Wright, with deadly weapons, to wit, with pistols, then and there loaded with gunpowder and leaden bullets, and did then and there discharge the said deadly weapons to, at, and against him, the said Joseph Wright, and did wound and maim him, the said Joseph Wright; and they, the said George Sanges, Dennis Alexander, Isaac Smith, and Charles Porter, in pursuance of said conspiracy, and while then and there in prosecution of said conspiracy as aforesaid, with force and arms, in and upon the body of said Joseph Wright, then and there in the peace of the United States, being feloniously, wilfully, and of their malice aforethought, and from a deliberate and premeditated design, unlawfully to effect the death of the said Joseph Wright, did then and there shoot off and discharge at and against him, the said Joseph Wright, loaded pistols, then and there loaded with gunpowder and leaden bullets, and by shooting off and discharging said loaded pistols as aforesaid, they, the said George Sanges, Dennis Alexander, Isaac Smith, and Charles Porter, did then and there wilfully and of their malice aforethought, strike and penetrate the body of the said Joseph Wright with leaden bullets, and did then and there inflict upon him, the said Joseph Wright, mortal wounds, of which mortal wounds he, the said Joseph Wright, did then and there

immediately die; and so the grand jurors aforesaid do find and present, on their oaths, that the said George Sanges, Dennis Alexander, Isaac Smith, and Charles Porter did then and there, feloniously and of their malice aforethought, kill and murder the said Joseph Wright, then and there a citizen of and in the peace of the United States, while they, the said George Sanges, Dennis Alexander, Isaac Smith, and Charles Porter, and their other co-conspirators, to the grand jurors unknown, were then and there prosecuting said conspiracy to injure and oppress the said Joseph Wright with intent on them (the said conspirators) to prevent and hinder the said Joseph Wright in the free exercise and enjoyment of his said right and privilege as a citizen of the United States, then and there secured to him, the said Joseph Wright, by the Constitution and laws of the
12 United States of America as aforesaid, as such citizen of the United States, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

(Signed) S. A. DARNELL,
U. S. Attorney.

The cause having come on for trial, the defendants demurred to this indictment upon five grounds, only two of which were relied on in the argument of counsel. These are—

Fourth. Because there are no such rights or privileges secured to the party conspired against, by the Constitution and laws of the United States, as those set out in the indictment.

Fifth. Because, on the facts alleged in said indictment, there is no crime or offense set out of which the courts of the United States can take cognizance.

Messrs. J. E. Mosely, W. C. Glenn, T. Z. Foster, for defts. S. A. Darnell, U. S. district attorney, and E. A. Angier, assistant district attorney, for the United States.

Justice Lamar delivered the opinion of the court.

The two sections of the Revised Statutes under which this indictment is drawn, and which were relied on, in the argument of the attorneys for the United States, viz, 5508 and 5509, are in the following language:

"Section 5508. If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years; and shall, moreover, thereafter be ineligible to any office or place of honor, profit, or trust created by the Constitution or laws of the United States."

13 "Section 5509. If in the act of violating any provision in either of the two preceeding sections any other felony or misdemeanor be committed, the offender shall be punished for the same with such punishment as is attached to such felony or misdemeanor by the laws of the State in which the offense is committed."

The questions presented by this demurrer are: Does an indictment which charges the defendants with conspiring to oppress and injure a citi-

zen of the United States in the exercise of his right to appear and testify as a witness before the grand jury of a Federal court, and also with having, in pursuance of such conspiracy, murdered him, because of his having exercised that right, describe an offense within the sections referred to? Is the right to appear as a witness and to testify before a grand jury of a Federal court a right secured by the Constitution and laws of the United States in the sense in which that language is employed in those sections?

These questions are not altogether free from difficulty in view of other sections which have an important bearing on the case, in view of the acts of Congress from which they are taken, and especially in view of the numerous decisions of the Supreme Court of the United States in which that court has had occasion to express its views upon the amendments to the Constitution of the United States for the enforcement of which those statutes were avowedly passed.

The two sections of the Revised Statutes under which this indictment is conceded to be drawn are taken from the act of Congress approved 31st May, 1870, s. 5, vol. 16, p. 141, known as the "enforcement act," entitled "An act to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes."

The sixth and seventh sections of the act are substantially incorporated into the text of sections 5508 and 5509 of the Revised Statutes. All the preceeding sections of the act relate directly and exclusively to the protection of colored citizens in the exercise of the right of suffrage in the several States.

Its fifth section makes it a penal offense for any person to prevent, hinder, or intimidate any person from exercising the right of suffrage, to whom it is secured by the fifteenth amendment, by means of
14 bribery, threats, or threats of depriving of occupation, or of ejecting from lands or tenements, or of refusing to renew a lease, or of violence to such person or his family.

There is nothing in this fifth section which aims at a conspiracy. The sixth section does refer in positive terms to a conspiracy, and it is insisted by counsel for the prosecution that its language, retained in the Revised Statutes, refers to such a conspiracy as is set forth in this indictment, and that the Federal courts have jurisdiction over the offense as charged.

The Attorney-General of the United States clearly does not concur in this construction. In his late annual report he uses the following language:

"It is certainly an anomaly in Government that those who have committed murders for the purpose of stopping prosecution in the Federal courts should not only not be punished, but not even be put upon trial, although, in at least two cases in one district during 1890, well known. Yet such is the fact. It is needless to say *that the Federal courts have no adequate jurisdiction of these offenses.* (Italics ours.)

"Section 5509 of the Revised Statutes provides that if any person attempts intimidation, threats, etc., to prevent any citizen from exercising the right of suffrage, and in so doing commits a felony, or if two or more persons conspire to debar any person from the enjoyment of any of his civil rights, and in so doing commits a felony, such felony shall be punished according to the laws of the State wherein the same is committed."

"If section 5509 were so broadened as to make any felony, committed while in the act of violating any statute of the United States, triable in the United States courts and punishable according to the laws of the State wherein the same is committed, it will greatly help in the administration of justice.

"So long as persons who kill officers, witnesses, or jurors for the purpose of impeding the administration of justice can only be tried and punished in a Federal court as for a minor offense, the administration
15 of the United States laws, and the laws themselves in many districts, will have little respect."

(See Annual Report of the Attorney-General of the United States for the year 1890, Dec. 1, 1890, pp. XIII, XIV.)

This construction of the Attorney-General derives some support from the fact that the enforcement act of 1870 itself was primarily passed to secure and enforce the equal right of suffrage to all citizens, irrespective of race, color, or previous condition of servitude. (I. Woods, 320.)

In the case of Baldwin vs. Franks (120 U. S., 691) the Supreme Court of the United States, in its opinion, delivered by Mr. Chief Justice Waite, referring to this section 5508 and the statute from which it was taken, used the following language:

"That the statute was the act of May 31st, 1870, C. 114, 16 Stat., 140, 'to enforce the right of citizens of the United States to vote in the several States of this Union, and for other purposes.' It is the statute which was under consideration as to some of its sections in the United States vs. Reese (supra), and from its title as well as its text it is apparent that the great purpose of Congress in its enactment was to enforce the political rights of citizens of the United States in the several States. Under these circumstances there can not be a doubt that originally the word 'citizen' was used in its political sense, and as the Revised Statutes are but a revision and consolidation of the statutes in force December 1st, 1873, the presumption is that the word has the same meaning there that it had originally."

"This particular section is a substancial reënactment of sec. 6 of the original act, which is found among the sections that deal exclusively with the political rights of citizens, especially their right to vote, and were evidently intended to prevent discriminations in this particular against voters on account 'race, color, or previous condition of servitude.'"

But if it was assumed that this section was intended to have a wider scope than protection to the right to vote, and to extend to any right secured by the Constitution and laws of the United States, the construction of
16 the Attorney-General is still corroborated by the further fact, that after it passed Congress enacted another law, which in express terms described the specific offense of conspiring to intimidate and deter a witness from attending and testifying in a Federal court, and also prescribing a punishment entirely different from that prescribed in sections 5508 and 5509.

The act referred to was passed April 20th, 1871 (17 Stat., sec. 13), entitled "An act to enforce the fourteenth amendment to the Constitution of the United States, and for other purposes." Its 16th section is contained in section 5406 of the Revised Statutes, which is as follows:

"If two or more persons in any State or territory conspire to deter by force, intimidation, or threat any party or witness in any court of the

United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such a juror, each of such persons shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or imprisonment, with or without hard labor, not less than six months nor more than six years, or by both such fine and imprisonment." (20 April, 1871, C. 22, S. 2, v. 17, p. 13.)

This section is in chapter four of the Revised Statutes under the head of "Crimes against Justice." And it is very properly there, for it manifestly relates to those crimes and misdemeanors which affect the Government, its public polity, and the administration of the laws in its courts of justice, as distinguished from those offenses which are pointed against the civil rights of private persons.

The Congress of the United States clearly possesses the constitutional power, and is charged with the constitutional duty, to protect all the agencies of the Federal Government, including the courts, their officers, and all persons whose attendance is necessary in the proceedings of those courts, such as parties, witnesses, and jurors. That power and
17 duty of protection have been exercised and performed with regard to parties, witnesses, and jurors in section 5406, above quoted.

We are informed by the brief of the assistant United States attorney, that there is pending in the court a separate indictment, under section 5406, against these defendants, charging them with the offense made penal by that section. Hence, the practical effect of our decision upon the demurrer to this indictment now before us will be the determination of the question whether in the event of the conviction of these defendants of the crime of having conspired to deter, by force, the witness Wright from attending the United States court, or from testifying therein, or of having injured him in his person on account of his having so testified, their punishment shall be that prescribed in section 5406, or that prescribed in sections 5508 and 5509. The right or duty of the Government to provide for the protection given by section 5406 to parties, jurors, and witnesses arises not so much from the interest or right of those persons as from the necessity of the Government itself, that the great agencies of its judicial organism should not be impeded in their official administration of the laws, and that all of its instrumentalities should be protected against the obstruction of force or fraud. The status of a witness in a court, pending either a civil or criminal proceeding, is in law regarded as one of obligation and duty which he is compellable to perform, or of a function which he is obliged to discharge, rather than as a right on his part which he may or may not exercise according to his own will. The right, in relation to his testimony, is the right of the parties litigant or of the Government, as the case may be, to have it taken; not his own either to offer or to withhold. They are entitled to the process of the court to compel his attendance, and, when he attends, to compel him to testify even against his will to the whole truth and nothing but the truth.

With respect to a prosecution for crime pending in a Federal court, or in a United States grand jury, the right to which this particular section designs to protect it is a public right, i. e., the right of United States to have its witnesses and their testimony, and to have them protected in going to and returning from the court. The wrong punished in such case
18 is a public wrong, and its correlative is a public right.

Section 5508 presupposes that the "right or privilege" involved has already been secured by the Constitution and laws of the United States, and therefore it is necessary to turn to them for the definition of the right in this indictment charged to be violated, in order to determine whether the indictment is authorized by the provisions of that section.

Fortunately we are not without judicial construction of these provisions and of other statutes relating to cognate subjects, as well as judicial expositions of the constitutional amendments which it is contended contained the authority for their enactment. (Slaughter-house Cases, 16 Wallace, 36; United States vs. Cruikshanks, 1 Woods, 308; United States vs. Cruikshanks, 92 U. S., 542; United States vs. Reese, 92 U. S., 214; United States vs. Harris, 106 U. S., 629; Strauder vs. West Virginia, 100 U. S., 303; Ex parte Virginia, 100 U. S., 339; Bradwell vs. The State, 16 Wallace, 130; Hurtado vs. California, 110 U. S., 516; Civil Rights Cases, 109 U. S., 3; Ex parte Yarborough, 110 U. S., 651; United States vs. Waddell, 112, U. S., 73.)

The case of the United States vs. Cruikshanks (supra) arose from an indictment containing numerous counts, drawn under the sixth and seventh sections of the enforcement act of May 31st, 1870, charging the defendants with conspiring together to hinder and prevent certain citizens of the United States in the exercise of various civil rights therein described.

The section in the enforcement act, on which the indictment in the Cruikshank case was founded, are, as we have stated, the same in substance as those on which the indictment in this case was founded.

All the counts in the former indictment were held by Judge Bradley in the court below (1 Woods, 303) and by the Supreme Court (92 U. S., 548), to be not sufficient to sustain conviction, because the sixth and seventh sections of the enforcement act were unauthorized by the Constitution.

As the constitutional amendments relied upon in support of those sections are clearly illustrated, and the limits within which they may be enforced by Congress are distinctly defined in the able opinion of the court in that case, delivered by Chief Justice Waite, we deem it
19 proper to quote more freely from it than usual.

The chief ground of the decision is that the clauses in the constitutional amendments relied on to sustain the validity of the enforcement act were guarantees of rights against the action of government only, Federal or State, and not against individuals, and that, therefore, they do not afford constitutional ground for penal legislation against individuals.

The rights specified in that indictment which the defendants are accused of conspiring to hinder and interfere with are, 1st, the right of peaceably assembling together for a peaceful and lawful purpose; 2nd, the right of bearing arms for a lawful purpose; 3rd, the right to be protected against the deprivation of life and liberty of person without due process of law; 4th, the right of equal protection of the laws of the State and of the United States; 5th, the right of voting as citizens of the United States, irrespective of race, color, or previous conditions of servitude.

The court held that none of these rights are granted by the Constitution, nor dependent upon it for their existence, but are only guaranteed against State or Federal infringement.

Speaking of the first-mentioned right, to wit, the right to assemble together for a peac'able purpose, it says: The first amendment to the Constitution prohibits Congress from abridging the rights of the people to assemble and to petition the Government for a redress of grievances. " * * * * * * ." The particular amendment now under consideration assumes the existence of the right of the people to assemble for lawful purposes, and protects it against encroachments by Congress. The right was not created by the amendment; neither was its continuance guaranteed, except as against Congressional interference. For their protection in its enjoyment, therefore, the people must look to the States. The power for that purpose was originally placed there, and it has never been surrendered to the United States."

With regard to the second right specified in the indictment, namely, the right to bear arms for a lawful purpose, it says: "The second amendment declares that it shall not be infringed, but this, as has been seen, means no more than it shall not be infringed by Congress. This is one of the amendments that has no other effect than to restrict the powers of the National Government, leaving the people to look for their protection against any violation by their fellow citizens of the right it recognizes, to what is called, in The City of New York vs. Miln, 11 Pet., 139, the 'powers which relate to merely municipal legislation,' or what was, perhaps, more properly called 'internal police, not surrendered or restrained' by the Constitution of the United States."

Referring to the charge in that indictment, that the defendants conspired to deprive the citizens named therein of their several lives and liberty without due process of law, the court says: "The fourteenth amendment prohibits a State from depriving any person of life, liberty, or property without due process of law; but this adds nothing to the rights of one citizen as against another. It simply furnishes an additional guaranty against any encroachment by the State upon the fundamental rights which belong to every citizen as a member of society." In the same connection, the court said: "This is nothing else than alleging a conspiracy to falsely imprison or murder citizens of the United States, being within the territorial jurisdiction of the State of Louisiana. The rights of life and personal liberty are natural rights of man. 'To secure these rights,' says the Declaration of Independence, 'governments are instituted among men, deriving their just powers from the consent of the governed.' The very highest duty of the States when they have entered into the Union under the Constitution, was to protect all persons within their boundaries in the enjoyment of these '*un*alienable rights with which they were endowed by their Creator.' Sovereignty for this purpose rests alone with the States. It is no more the duty or within the power of the United States to punish for a conspiracy, to falsely imprison, or murder within a State than it would be to punish for false imprisonment or murder itself." * * * "These counts in the indictment do not call for the exercise of any of the powers conferred by this provision in the amendment."

With regard to the fourth right mentioned in that indictment which the defendants are charged with conspiring to violate, viz, the right of en-

joying the equal protection of the laws of the State of Louisiana,
21 and of the United States, the court says: "The fourteenth amendment prohibits the State from denying to any person within its jurisdiction the equal protection of the laws, but this provision does not any more than the one which precedes it, and which we have just considered, add anything to the rights which one citizen has under the Constitution against another. The equality of the rights of the citizens is a principle of republicanism. Every republican Government is in duty bound to protect all its citizens in the enjoyment of this principle, if within its power. That duty was originally assumed by the States, and it still remains there. The only obligation resting upon the United States is to see that the United States do not deny the right. This the amendment guarantees, but no more. The power of the National Government is limited to the enforcement of this guaranty."

It is hardly necessary to go over the other cases, which in another place in this opinion we have cited for convenience of reference. In the decisions of the Supreme Court upon them it has found it necessary to pass upon the construction of these and many other sections of the Revised Statutes in their application to the varying facts presented by each case. But they all show the steady adherence of that court to the fundamental principles enunciated by Mr. Justice Bradley in the case of The United States vs. Cruikshanks, in 1st Wood, 308, and reiterated by the Supreme Court of the United States in the same case on a writ of error. They all agree that aside from the extinction of slavery and the declaration of national citizenship, the Constitutional amendments are restrictive upon the power of the General Government and the action of the States, and there is nothing in their language or spirit which indicates that they are to be enforced by Congressional enactments authorizing the trial, conviction, and punishment of individuals for individual invasions of individual rights, unless committed under State authority; that the fourteenth amendment guaranteed immunity from State laws and State acts invading the privileges and rights specified in the amendment, but conferred no rights upon one citizen as against another; that the provision of the fourteenth amendment authorizing Congress to enforce its guarantees by legislation means such legislation as is necessary to control and counteract State abridgement, and that the protection and enforcement of the rights of citizens of the United States
22 provided in the enforcement act of 1870 and the civil rights act of 1875 apply only to such rights as are granted by *the* dependent on the Constitution and valid and Constitutional laws of the United States.

In the light of these principles, as laid down by the Supreme Court of the United States, we are not prepared to say that the right of any person to be a witness and attend court for the purpose of giving his testimony is a right granted by the Constitution. The Constitution has no provision in relation to witnesses and their testimony in court, except that in article V, declaring that "no person shall be compelled in a criminal case to be a witness against himself," and the one in Article VI, which declares that "in criminal prosecutions the accused shall enjoy the right to be confronted with the witnesses against him, and to have compulsatory protest for obtaining witnesses in his favor." The giving and receiving of evidence as an essential and vital principle in the proceedings of all courts has been firmly established in English and American law long anterior to the adoption of

the Constitution. It did not originate in the Constitution, and is not in any manner dependent for its existence upon that instrument. Is there any law of Congress outside of sections 5508 and 5509 which secures the right in question? We have already shown that it is not secured as a private right by section 5406, either in express terms or by implication.

We are not unmindful of the fact that the 16th section of the enforcement act of 1870 mentions the giving of evidence as a right. That law, as we find it incorporated into the Revised Statutes of the United States, section 1977, declares that "all persons within the jurisdiction of the United States shall have the same right in every State and territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exaction of every kind, and to no other."

Manifestly the right to give evidence, which it is the intention of this section to secure, is not the right alleged to have been violated in the indictment under consideration. It unquestionably secures to persons
23 of color the same right to give evidence as is enjoyed by white citizens. Its express purpose, as in section 858, is to take care of the colored witnesses in the United States courts, to remove all discrimination against them as witnesses, and to make the laws of the State the *guage* of the competency of all witnesses.

But there is another view which demonstrates that this section does not sustain the indictment in this case. We can not present it more forcibly than by quoting the following from the opinion of the Supreme Court in the Civil Rights cases (supra). Referring to the provision as above quoted, and other subsequent provisions in the statute from which this section was taken, the learned justice says:

"This law is clearly corrective in its character, intended to counteract and furnish redress against State laws and proceedings, and customs having the force of law, which sanction the wrongful acts specified. In the Revised Statutes, it is true, a very important clause, to wit, the words 'any law, statute, ordnance, regulation, or custom to the contrary notwithstanding,' which gave the declaratory section its point and effect, are omitted; but the penal part by which the declaration is enforced, and which is really the effective part of the law, retains the reference to State laws by making the penalty apply only to those who should subject parties to a deprivation of their rights under color of any statute, ordinance, custom, etc., of any State or Territory, thus preserving the corrective character of the legislation. Rev. St., sections 1977, 1978, 1979, 5510. In this connection it is proper to state that civil rights, such as are guaranteed by the Constitution against State aggression, can not be impaired by the wrongful acts of individuals, unsupported by State authority in the shape of laws, customs, or judicial or executive proceedings. The wrongful act of an individual, unsupported by any such authority, is simply a private wrong or a crime of that individual; an invasion of the rights of the injured party, it is true, whether they effect his person, his property, or his reputation; but if not sanctioned in some way by the State, or not done under State authority, his rights remain in full force, and may presumably be vindicated by resort to the laws of the State for

redress. A' individual can not deprive a man of his right to vote, to hold property, to buy and sell, to sue in the courts, or to be a witness or juror; he may, by force or fraud, interfere with the enjoyment of the right in a particular case; he may commit an assault against the
24 person, or commit murder, or use ruffian violence at the polls, or slander the good name of a fellow-citizen; but, unless protected in these wrongful acts by some shield of State law or State authority, he can not destroy or injure the right; he will only render himself amenable to satisfaction or punishment, and amenable, therefore, to the laws of the State where the wrongful acts are committed. Hence, in all those cases where the Constitution seeks to protect the rights of the citizen against discriminative and unjust laws of the State by prohibiting such laws, it is not individual offenses, but abrogation and denial of rights which it denounces, and for which it clothes the Congress with power to provide a remedy. * * * And the remedy to be provided must necessarily be predicated upon that wrong. It must assume that in the case provided for the evil or wrong actually committed rests upon some State law or State *or State* authority for its excuse and perpetration."

Our attention has been called to two cases (Ex parte Yarborough, 110 United States, 653, and United States vs. Waddell 112, U. S. 3) as authorities in support of the theory of this indictment.

The former of these two cases originated in an indictment in the circuit court of the United States for the northern district of Georgia. The indictment founded on sections 5508 and 5520, Rev. Stat., was for a conspiracy to intimidate a citizen of African descent in the exercise of his right to vote for a member of Congress, in execution of which they bruised and maltreated him, and that they did this on account of his race, color, and previous condition of servitude. The court hel' that inasmuch as the qualification for the exercise of the right of suffrage in the choice of the members of the House of Representatives is defined by the Constitution, which expressly confers upon the Congress the power to prescribe the time, place, and manner of holding the election, it may make such regulations as are necessary to guard it from fraud and violence, and to punish the persons by whom they are disregarded.

The principle which pervades this case is not in any way inconsistent with those laid down in the case of the United States vs. Cruikshanks, and the civil rights cases. In these last named cases the court de-
cided that the righ' named in the indictment and alleged to
25 to be violated were not created or conferred by the constitutional amendment, and that, therefore, the section 5508, or rather the corresponding section of the statute of 1870, so far as it relates to those rights was not constitutional. In Ex parte Yarborough the court held that the right therein named and alleged to have been violated was created and conferred by the Constitution in the body of the instrument itself, namely, the fourth section of the first article of the Constitution of the United States, and also by the laws of Congress passed in pursuance of the express power which that article conferred upon it. And the court, through Mr. Justice Miller, says, speaking of the power to protect the parties assaulted: "The power in either case arises out of the circumstances that the function in which the party is engaged or the right which he is about to exercise is dependent on the laws of Congress."

In reply to the objection that the right to vote for a member of Congress is not dependent upon the Constitution and laws, but upon those of the State, it says: "It is not correct to say that the right to vote for a member of Congress does not depend upon the Constitution of the United States." Again: "It is true, therefore, that the electors for members of Congress owe their right to vote to the State law in any sense which makes the exercise of the right to depend exclusively on the law of the State."

This is still more clearly shown in the case of the United States vs. Waddell, supra. In this case an information had been filed against Waddell and others charging them under these sections with having conspired together to deprive a citizen of the right to establish a homestead upon public lands under the homestead laws. The court held that this was a case in which the right against the exercise and enjoyment of which injury and oppression were charged was created by and grew directly out of the constitutional legislation of Congress. In delivering the opinion of the court Mr. Justice Miller said: "The protection of this section extends to no other right, to no right or privilege dependent on a law or laws of a State. Its object is to guarantee safety and protection to persons in the exercise of rights dependent on the laws of the United States, including, of course, the Constitution and treaties, as well as statutes,
26 and it does not, *in this section at least, design to protect any other rights.*" (Italics ours.)

"The right assailed, obstructed in its exercise, prevented, or intended to be prevented, as set out in this petition, is very clearly a right wholly dependent upon the act of Congress concerning the settlement and the sale of public lands of the United States. No such right exists or can exist outside of an act of Congress. The Constitution of the United States by Art. 4, sec. 3, in express terms vests in Congress 'the power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States.' One of its regulations, the one under consideration, authorizes a class of persons, of whom Lindsley is one, to settle upon its lands, and upon payment of any inconsiderable sum of money and the declaration of intent to make it a homestead, he is authorized to reside there." Again: "The right guaranteed is not the mere right of protection against personal violence." * * * "It is the right to remain on the land in order to perform the requirements of the act of Congress, and, according to its rules, perfect his incipient title."

"Whenever the acts complained of are of a character to prevent this or throw obstruction in the way of exercising this right, and for the purpose and with the intent to prevent it or to injure or oppress a person because he has exercised it, then, because it is a right asserted under the law of the United States and granted by that law, those acts come within the purview of the statute and the constitutional power of Congress to make such statute." And one of the quotations from Ex parte Yarborough which we have given above follows. These cases differ very materially from the case under consideration. There the rights are undeniably dependent upon the Constitution of the United States or the laws in pursuance thereof, and the rights in question there were such as fell clearly within the generally accepted view presented in the previous decisions. They

were such rights as might be enforced in a court of justice, and a denial of which by any one would subject the offender to a liability to an action for civil damages or to criminal prosecution in court. Here none of these elements are found, as we think we have shown.

27 We have also been referred to the case of the United States vs. Lancaster, 44 Fed. Rep., 896, decided in the circuit court of the southern district of Georgia by Judge Speer, as a case in all essential features similar to this one; it is argued that on the authority of that case the demurrer herein should be overruled. We have examined the opinion of the learned judge in that case, and we have no hesitancy in saying that that case is not at all similar to this. This was a case in which there was an indictment for conspiracy under sections 5508 and 5509 for injuring and oppressing a citizen of the United States in the exercise of his right to sue in the Federal court, and it was also alleged in the indictment that in the execution and furtherance of such conspiracy the defendant murdered said citizen. The right in that case was so clearly one dependent upon and growing out of the Constitution and laws of Congress respecting the jurisdiction of the United States courts that a bare mention of the fact is sufficient to show its entire dissimilarity to the right, of which this indictment charges to have been infringed.

The indictment in this case does not charge the defendants with a conspiracy to deprive a citizen of the United States, being a person of color, and because of his color and previous condition of servitude, of the right to be a witness and to testify in a Federal court, and with murdering him for having exercised the same. It does not allege that the State of Georgia, where the offense is charged to have been committed, has made or enforced any law abridging the right of any citizen or citizens to be such witnesses or to give such evidence; it does not allege that the State has in any of its departments, or by any of its officers, or by any of its agents acting under its authority, denied to any person the right to give evidence in any court; it does not allege that the State has failed to recognize and protect the rights of all citizens of the United States, irrespective of race, color, or *or* previous conditions of servitude, to attend the courts when summoned, and to testify fully and freely therein; but it is an indictment which alleges that the defendants committed the crime of murder upon the person therein named within the territorial limits of the State of Georgia.

28 It is the opinion of the court:

First. That irrespective of any question of the constitutional validity of sections 5508 and 5509, the indictment describes no offense within their purview.

Secondly. That any construction which brings the acts set forth in the indictment within the intent and meaning of these sections, would render them (so far as they relate to witnesses and testimony) inconsistent with the Constitution of the United States.

It has been our duty to adopt that construction which without doing violence to the obvious import of the words, brings the enactment into harmony with the supreme law. And where the general words in a statute are equally susceptible of two constructions, one of which makes it accordant with the Constitution, and the other renders it beyond the authority

it confers, that construction should be adopted which brings the statute into harmony with the constitution. Granada Co. vs. Brogden, 112, U. S. 268–269.

We have given the questions involved in this case the attention which their importance demands; and after a patient examination of the arguments advanced and the authorities cited by counsel on both sides, we have come to the conclusion that the indictment is not in law good and sufficient.

It is ordered that the demurrer be sustained.

Filing. Filed in clerk's office October 5th, 1891. O. C. Fuller, clerk.

29 *Order sustaining demurrer and quashing indictment.*

UNITED STATES *vs.* GEORGE SANGES, DENNIS ALEXANDER, Charles Porter, and Isaac Smith.	No. 3648. Conspiracy to injure and oppress a citizen of the United States in exercise of his rights, and murder said citizen.

Upon hearing argument upon this demurrer, the same having been argued before the circuit justice of this circuit, Hon. L. Q. C. Lamar, and the presiding judge of this court. It is considered and adjudged by the court that the demurrer is well founded in law, and that the same be sustained and the indictment quashed. It is further ordered that the opinion this day handed down in this case be entered of record.

Done in open court this Oct. 5th, 1891.

WM. T. NEWMAN,
U. S. Judge.
GLENN & MADDOX,
Attorneys.

Filing. Filed in clerk's office 5th day of October, 1891. O. C. Fuller, clerk.

30 *Assignment of errors.*

United States of America. Northern district of Georgia. Circuit court of said district.

THE UNITED STATES *vs.* GEORGE SANGES, DENNIS ALEXANDER, Isaac Smith, and Charles Porter.	Indictment for conspiracy and murder under sections 5508 and 5509, Revised Statutes United States. Demurrer to indictment and order sustaining same.

Before L. Q. C. Lamar, circuit justice, 5th circuit, and Associate Justice U. S. Supreme Court, and W. T. Newman, U. S. district judge for the northern district of Georgia.

And now comes the United States of America by its attorneys of record and assigns the following as errors:

In the judgment of said court in quashing said indictment and sustaining the demurrer thereto on the 5th of October, 1891, the same involving the "construction and application of the Constitution of the United States," to wit:

First. In sustaining the demurrer to said indictment on the grounds therein taken.

Second. In holding and deciding that the circuit court of the United States for the northern district of Georgia had no jurisdiction of an unlawful conspiracy, formed and committed within said district by "two or more persons to injure, oppress, threaten or intimidate any citizen of the United States in the free exercise and enjoyment of any right or privilege secured to him by the Constitution or laws of the United States or because of his having exercised the same," the said rights and privileges being such as are fully described in the said indictment of record in this court and the conspiracy against such rights and privileges of a citi-
31 zen of the United States being by the person and of the character and against the citizen mentioned in said indictment.

Third. In "construing and applying the Constitution of the United States" so as to rule and decide that neither said Constitution nor the sixth section of the enforcement act, approved 31st May (volume 16, page 141), refers to such a conspiracy as is set forth in said indictment.

Fourth. In holding and deciding that "irrespective of any question of sections 5508 and 5509, U. S. R. S., the indictment describes no offense within their purview.

Fifth. In holding and deciding "that any construction which brings the acts set forth in the indictment within the intent and meaning of these sections would render them, so far as they relate to witnesses and testimony, inconsistent with the Constitution of the United States."

Wherefore the United States assigns the above as the errors in the judgment of the court upon the demurrer to said indictment.

S. A. DARNELL,
U. S. Attorney.

Filing. Filed in clerk's office this 14th day of October, 1891. O. C. Fuller, clerk.

32 *Petition for writ of error.*

UNITED STATES OF AMERICA,
In the Circuit Court of the United States, Northern District of Georgia.

To the Honorable the Justices of the Supreme Court of the United States:

And now comes the United States of America, and complains that in the records and proceedings, and also in the rendition of judgment upon a demurrer to an indictment in the case of the United States of Ameri a against George Sanges, Dennis Alexander, Isaac Smith, and Charles Porter, heard and determined in the circuit court of the United States for said northern district of Georgia, at the October term thereof, 1891, and in which judgment on said demurrer was rendered against the said United

States on a question in which the "jurisdiction of said United States circuit court was at issue," and which "involved the construction and application of the Constitution of the United States," and "under an act to establish circuit courts of appeal and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," manifest error hath intervened to the great damage of the said United States of America, by reason of the following facts:

On the 27th of May, 1891, there came on to be heard in the circuit court of the United States for the northern district of Georgia, L. Q. C. Lamar, circuit justice 5th circuit and associate justice U. S. Supreme Court, and W. T. Newman, U. S. district judge for the northern district of Georgia, then and there presiding, the case of the United States of America against said defendants, to wit, George Sanges, Dennis Alexander, Isaac Smith, and Charles Porter, upon indictment, duly
33 found and returned by a grand jury in said U. S. circuit court, charging the aforesaid defendants in said northern district of Georgia with combining, conspiring, and confederating by and between themselves, and with other evil-disposed persons, to said grand jury unknown, with force and arms to injure and oppress one Joseph Wright, a citizen of the United States, in the free exercise and enjoyment of a right and privilege then and there, on the 11th of November, 1890, secured to said Joseph Wright by the Constitution and laws of the United States, and because said Joseph Wright was then and there, in said northern district of Georgia, on said 11th of November, 1890, in the free exercise and enjoyment of said right and privilege, to wit, the right and privilege of a citizen of the United States to inform the proper officers of the United States of violation of its internal-revenue laws and of attempts to defraud the United States by one William Teasley and the aforesaid Dennis Alexander; and the right and privilege of said Wright, as a citizen of the United States to aid in preventing such attempt to defraud the United States of its revenues and to prosecute such cases; and the right, privilege, and duty of said Wright, as a citizen of the United States, to aid in preventing such attempt to defraud the United States of its revenues and to prosecute such cases; and the right, privilege, and duty of said Wright, as a citizen of the United States, to obey the process of the United States and to comply with and answer the subpœnas of said United States courts, and in obedience thereto to appear and testify as a witness freely, fully, and truthfully before said United States, grand jury, in Atlanta, for the northern district of Georgia, to any matter pending thereing before said grand jury, criminating or tending to criminate said William Teasley, the aforesaid Dennis Alexander, and any other persons for violating the internal-revenue laws of the United States, and to return to his home in
34 peace and safety after so testifying before said grand jury; and the right and privilege of said Wright, as a citizen of the United States, to be secure, safe, and unmolested in his person and exempt from violence and from the assaults of the aforesaid conspirators for having exercised and enjoyed said rights, privileges, and immunities secured to him, the aforesaid Joseph Wright, as a citzen of the United States by the Constitution and laws of the United States; and the right of said Wright to be secure and exempt from "injury, oppression, threats, or intimidation by two or more persons," who conspired to deprive him of the rights and

privileges above enumerated and to injure him "because of his having so exercised the same," and in the execution of said conspiracy the said conspirators murdered said Wright, as is more fully set out in said indictment.

To said indictment the defendants demurred upon the following grounds, to wit:

First. Because there are no such rights and privileges secured to the party conspired against by the Constitution and laws of the United States as those set out in the indictment.

Second. Because on the facts alleged in said indictment there is no crime or offense set out of which the courts of the United States can take cognizance.

After hearing argument on said indictment and the demurrer thereto, the court, composed, as aforesaid, of Mr. Justice Lamar and Judge Newman, took the papers and reserved their decision until the next or regular October term of said circuit court of the northern district of Georgia, now in session when, on the 5th day of October, 1891, the opinion and decision of Mr. Justice Lamar, in which Judge Newman concurred, was handed down and announced, wherein said court sustained the demurrer to said indictment.

Petitioners, the United States of America, by its attorney of record, makes the following assignment of errors to the said decision of the court, to wit:

First. In sustaining the said demurrer to said indictment on the
35 grounds taken.

Second. In holding and deciding that the circuit court of the United States for the northern district of Georgia has no jurisdiction of a conspiracy committed within said district by "two or more persons to injure, oppress, threaten, or intimidate any citizen of the United States in the free exercise and enjoyment of any right or privilege secured to him by the Constitution or laws of the United States or because of his having so exercised the same, the said rights and privileges of a citizen of the United States being such as heretofore described in the first part of this petition and more fully enumerated in said indictment, and the conspiracy against such rights and privileges being by the conspirators and of the character and against the citizen mentioned in said indictment.

Third. In construing and applying the Constitution of the United States so as to rule and decide that neither the said Constitution nor the sixth section of an act of Congress, passed in pursuance thereof, approved 31st of May, 1870, volume 16, page 141, refers to such a conspiracy as is set forth in this indictment.

Fourth. In holding and deciding that "irrespective of any question of the constitutional validity of sections 5508 and 5509, U. S. R. S., the indictment describes no offense within their purview."

Fifth. In holding and deciding "that any construction which brings the act set forth in the indictment within the intent and meaning of these sections would render them, so far as they relate to witnesses and testimony, inconsistent with the Constitution of the United States." An assignment of errors has been filed in the clerk's office of said circuit court, setting out separately and particularly each error asserted and intended to be urged.

Wherefore the said United States of America shows that, inasmuch as the decision of said court on said indictment and demurrer is one
36 in which "the jurisdiction of the said United States courts was in issue" and "involved the construction and application of the Constitution of the United States," it prays for the allowance of a writ of error, and for a reversal of the decision of said court upon the demurrer to said indictment, and for such other and further process as may cause the same to be corrected by the Supreme Court of the United States, and for such other and further order and citation to issue as are usual in such cases.

S. A. DARNELL,
U. S. Attorney.

Filing: Filed in clerk's office 14th day of October, 1891. O. C. Fuller, clerk.

37 UNITED STATES OF AMERICA,
Northern District of Georgia:

I, O. C. Fuller, clerk of the United States circuit court in and for the northern district of Georgia, do hereby certify the foregoing to be a true, full, correct, and complete transcript of the record and proceedings had in the cause wherein The United States was plaintiff and George Sanges, Dennis Alexander, Isaac Smith, and Charles Porter were defendants, as appears of record and now remaining of file in my office.

In testimony whereof I hereunto set my hand and the seal of the said circuit court, at Atlanta, Ga., this the 24th day of October, A. D. 1891.

[SEAL.] O. C. FULLER,
Clerk U. S. Circuit Court, Northern District of Georgia.

(Indorsement on cover:) Case No. 14928. Term No. 1454. The United States, plaintiff in error, vs. George Sanges, Dennis Alexander, Isaac Smith, and Charles Porter. N. Georgia C. C. U. S. Filed November 9, 1891.

Office Supreme Court U. S.
FILED.
DEC 17 1891
JAMES H. McKENNEY
Clerk

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1891.

THE UNITED STATES, *Plaintiff in Error*,
vs.
GEORGE SANGES AND OTHERS. } No. 1,454.

Writ of Error to the Circuit Court of the United States for the Northern District of Georgia.

Motion of Defendants to Dismiss the Writ of Error.

Come the defendants in this cause and move the court to dismiss the writ of error herein, because, they say, this court has no jurisdiction of the same, or to hear and determine the matters sought to be brought before the court by such writ of error.

A. H. GARLAND,
H. J. MAY,
Attorneys for Defendants.

Brief on the Motion to Dismiss.

These defendants were indicted under sections *5508 and 5509, Rev. Stat.* They demurred to the indictment

and after argument and due consideration the demurrer was sustained and the indictment quashed (Rec., 18).

To review this judgment the writ of error herein is prosecuted.

Section 697, Rev. Stat., provides for a review in this court of a criminal case only on certificate of division of opinion. This mode of review being given and no other, naturally it is exclusive; that is, no other mode of review in criminal cases can be had.

Besides this general rule of construction, we have the very question determined several times over by this court and by circuit courts of the United States.

United States *v.* Gibert, 2 Sum. (C. C.), 19;
United States *v.* Plumer, 3 Clif. (C. C.), 1;
Ex parte Gordon, 1 Black (U. S.), 504;
United States *v.* Emholt, 105 U. S., 414–16.

From the 29th of April, 1802, when this law was passed, there was no other means than this to get a criminal case into this court at all, save and except in applications for *habeas corpus*, but proceedings on these have been determined by this court, to be civil and not criminal.

Ex parte Tom Tong, 108 U. S., 556;
Ex parte Cota, 110 *Ib.*, 385.

In other words there is no general right of review in criminal cases, by this court.

United States *v.* Perrin, 131 U. S., 55;
Reilly's Case, *Ib.*, 58;
Hall's Case, *Ib.*, 50.

Much contest and struggle have been had, from time to time, to change this and get review here in criminal cases, especially for the defendant convicted, but it failed until the act of February, 1889, 25 Stats., pp.

655–6. By this act (sec. 6) writs of error are allowed only on conviction in capital cases, and this boon is extended only to the party indicted and convicted. The case in hand certainly comes not under this act.

The act of March 3, 1891, enlarged the list of the beneficiaries of this law, by inserting in addition to capital convictions "*or otherwise infamous crimes.*" (Appellate Court bill, sec. 5, ~~sub~~ 3, 26 Stats., p. 827.)

The plaintiff in error in this proceeding was not indicted even, and certainly not convicted, and therefore is not entitled to prosecute this writ so far as these two acts are concerned.

There is here no petition for *habeas corpus*, nor is there any division of opinion. On the contrary, the opinion seems to have been quite unanimous.

It must be manifest, therefore, this court can not take jurisdiction of this cause.

A. H. GARLAND,
H. J. MAY,
For Defendants.

Notice of Motion.

To Hon. Wm. H. H. Miller, Attorney General of the United States:

You are hereby notified, that the defendants in error in the above-named cause will, on Monday, the 11th day of January, 1892, on the meeting of the Supreme Court of the United States on that day, or as soon thereafter as counsel can be heard, submit for the consideration of the court the foregoing motion and papers.

Very respectfully,

A. H. GARLAND,
H. J. MAY,
Counsel for Defendants.

WASHINGTON, D. C.,
December 16, 1891.

FILED.
JAN 8 1892
JAMES H. MCKENNEY,
Clerk.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 1454.

UNITED STATES,

Plaintiff in Error,

vs.

GEORGE SANGES ET AL.

Defendants in Error.

BRIEF OF GLENN & MADDOX FOR DEFENDANTS IN ERROR.

In the Supreme Court of the United States

OCTOBER TERM, 1891.

THE UNITED STATES, *Plaintiff in Error,*

vs.

GEORGE SANGES ET AL., *Defendants in Error.*

No. 1,454.

Brief of the Defendants in Error.

The defendants in error were indicted under sections 5,508 and 5,509 of the Revised Statutes.

The material parts of the indictment are that they conspired together to deprive one Wright of his rights and privileges as a citizen of the United States in giving information of revenue violations on their part to the courts of the United States, and that he had been a witness against them as to such violations, and while such witness and in the exercise of such rights the defendants in error, in pursuance of the conspiracy so formed, assaulted him on the highway, in Cobb county, Georgia, as he was returning to his home, and killed him.

The defendants in error demurred to the indictment upon several grounds, the main ones being, First, that there were no such rights and privileges of the said Wright guaranteed to him by the Constitution and laws of the United States; second, that upon the facts alleged in the indictment there was no crime set out of which

the United States could take cognizance. On the hearing Hon. L. Q. C. Lamar and Hon. W. T. Newman, District Judge, presiding, the demurrer was sustained upon these two grounds and the indictment quashed.

The United States applied for and had allowed a writ of error, basing the right to such writ of error on section 5 of the act of March 3, 1891. Among the other grounds for a writ of error are these: "In any case involving the construction or application of the Constitution of the United States."

Defendants in error have now submitted a motion to dismiss the writ of error for lack of jurisdiction.

It is conceded by the defendants in error that sections 5,508 and 5,509 are valid and constitutional. So held by this court in ex parte, Yarborough 110 U. S. 651, and in United States vs. Waddel, 112 U. S. 76.

What is contended is that these sections are not applicable to a case like this. First, because there is no right to be a witness conferred by the laws of the United States which a man can claim and demand. It is true that the laws of the United States make a person competent to testify, and any effort to nullify this competency might be the denial of a right and privilege. This, however, no individual or number of individuals could do. No power, except the courts of the United States themselves, could interfere with the right in this sense.

Secondly, it is insisted that this section applies to rights and privileges as contradistinguished from obligations and duties. The United States having in any par-

ticular case conferred a right or privilege which the individual can exercise or not as he sees proper, will protect him in such exercise, and have the power to do so. But this is no such right. It is an obligation to be a witness, a duty as distinguished from a privilege; not something belonging to the individual as such, but an obligation to the government.

But conceding that in this character of witness this protection is thus afforded in such character is a right or privilege, the next inquiry is: Is it a right or privilege guaranteed by the constitution and laws of the United States?

Two things are requisite to give the United States power in this case; First, it must be a right or privilege; Next, it must be guaranteed by the constitution and laws of the United States.

It is insisted that this right or privilege if it be such is in no sense the creature of the constitution and laws of the United States. The status of a witness was the same prior to the constitution of the United States as now. The fact existed with all its burdens, duties, and obligations, prior to the foundation of this government. The right to security of person so existed whether witness or not, and this right was then as now committed to the States.

It is not intended in this argument to in any way attempt to limit the power of the government to protect its own agencies such as its courts in the full integrity of their power. This has been done by sections 5399-5406 so far as its witnesses are concerned. But in that case the starting point of the legislation is widely different from this. Here it is attempted to make the individual

the point from which legislation is to travel and to make his individuality of rights, if the expression may be allowed, the basis of jurisdiction. To do this except in the case of a right and privilege purely the creature of the constitution and laws of the United States, such for instance as the right to bring a suit in a Federal court, an illustration of a legal right and the right to be free from discrimination in the exercise of suffrage, on account of race, color, or previous condition, an illustration of a political right, it is respectfully submitted, is beyond the constitutional grant to the United States. All such are with the States.

These sections of the Revised Statutes, while broad and unrestricted in their terms, were a part of that general scheme of legislation upon part of the United States, rendered necessary by the results of the war. Primarily they were to protect the political rights growing out of the change of the old order when it gave place to the new. It is not insisted that they only apply to political rights. Their history is only invoked for the purpose of illustrating the contention that they have no application to a case of this sort.

The following authorities are referred to as illustrating and more or less sustaining the general line of this brief.

Ex-parte Yarborough, 110 U. S. 651.
United States, vs. Woddell 112 U. S. 76.
Baldwin vs. Franks, 120 U. S. 678.
United States vs. Cruikshank, 92 U. S. 542.
Civil Rights Cases, 109 U. S. 3.

W. C. GLENN.
C. D. MADDOX.
Counsel for defendants in error.

Off. Supreme Court U. S.
FILED,
JAN 2 1892
JAMES H. McKENNEY,
CLERK.

Case No. 14928.

In the Supreme Court of the United States.

OCTOBER TERM, 1891.

THE UNITED STATES, PLAINTIFF in error,
vs.
GEORGE SANGES, DENNIS ALEXANDER, Isaac Smith, and Charles Porter.
} Term No. 1454.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

BRIEF IN OPPOSITION TO MOTION TO DISMISS.

In the Supreme Court of the United States.

OCTOBER TERM, 1891.

THE UNITED STATES, PLAINTIFF in error, vs. GEORGE SANGES, DENNIS ALEXANDER, ISAAC SMITH, and CHARLES PORTER.	Term No. 1454.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

BRIEF IN OPPOSITION TO MOTION TO DISMISS.

This is a writ of error sued out by the United States to reverse a judgment of the circuit court of the United States for the northern district of Georgia, sustaining the demurrer to an indictment against the defendants in error and discharging them from custody thereunder. A motion is now made to dismiss this writ of error on the ground that the Supreme Court has no jurisdiction to entertain it. The point made is, that there is no provision in the new court of appeals act, or in any other statutory

provision not affected thereby, by which the United States may bring to this court for review the action of the circuit court adverse to the United States in a criminal case in which final judgment has been rendered.

The court of appeals act (26 Stat., 826), Secs. 4, 5, and 6, provides:

> SEC. 4. That no appeal, whether by writ of error or otherwise, shall hereafter be taken or allowed from any district court to the existing circuit courts, and no appellate jurisdiction shall hereafter be exercised or allowed by said existing circuit courts, but all appeals by writ of error or otherwise, from said district courts, shall only be subject to review in the Supreme Court of the United States or in the circuit court of appeals hereby established, as is hereinafter provided, and the review, by appeal, by writ of error or otherwise, from the existing circuit courts shall be had only in the Supreme Court of the United States or in the circuit court of appeals hereby established according to the provisions of this act regulating the same.
>
> SEC. 5. That appeals or writs of error may be taken from the district courts or from the existing circuit courts direct to the Supreme Court in the following cases:
>
> In any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision.
>
> From the final sentences and decrees in prize causes.
>
> In cases of conviction of a capital or otherwise infamous crime.
>
> In any case that involves the construction or application of the Constitution of the United States.

In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question.

In any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States.

Nothing in this act shall affect the jurisdiction of the Supreme Court in cases appealed from the highest court of a State, nor the construction of the statute providing for review of such cases.

SEC. 6. That the circuit courts of appeals established by this act shall exercise appellate jurisdiction to review by appeal or by writ of error final decision in the district court and the existing circuit courts in all cases other than those provided for in the preceding section of this act, unless otherwise provided by law, and the judgments or decrees of the circuit courts of appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy, being aliens and citizens of the United States, or citizens of different States; also in all cases arising under the patent laws, under the revenue laws, and under the criminal laws, and in admiralty cases, excepting that in every such subject within its appellate jurisdiction the circuit court of appeals at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for its proper decision. And thereupon the Supreme Court may either give its instruction on the questions and propositions certified to it, which shall be binding upon the circuit courts of appeals in such case, or it may require that the whole record and cause may be sent up to it for its consideration, and

thereupon may decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal.

And excepting also that in any such case as is hereinbefore made final in the circuit court of appeals, it shall be competent for the Supreme Court to require, by certiorari or otherwise, any such case to be certified to the Supreme Court for its review and determination with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court.

In all cases not hereinbefore in this section made final there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars besides costs. But no such appeal shall be taken or writ of error sued out unless within one year after the entry of the order, judgment, or decree sought to be reviewed.

It is not denied in the brief for the motion that the decision of the demurrer, and the reason upon which the judgment discharging the defendants proceeded, involved the construction or application of the Constitution of the United States. It could not well be denied, because the case was this:

The indictment charged the defendants with conspiring to deprive Joseph Wright of the free exercise and enjoyment of a right secured to him by the Constitution and laws of the United States, to wit, the right to inform the proper officers of the United States of violations of its internal revenue, and of attempts to defraud the United States by certain persons; to prosecute such violations of law, and to obey the process of its courts and to answer

the subpœnas thereof to appear before such courts as a witness in such cases, the said Wright then being under subpœna to give testimony therein, and in furtherance of such conspiracy, with murdering the said Wright.

A demurrer to the indictment was sustained on the ground that the right to testify in the United States court, and to obey the subpœna of such court, without molestation, oppression, or assault therefor, is not a right secured by the Constitution and laws of the United States, and therefore that, irrespective of the constitutional validity of sections 5508 and 5509, the act charged in the indictment was not within the purview of those sections.

Our contention is that this case comes within the language of section 5 of the court of appeals act, which permits a writ of error from the district court, or from the existing circuit courts, direct to the Supreme Court in any case which involves the construction or application of the Constitution of the United States. The objection to this view is that section 697 of the Revised Statutes provides for a review in this court of a criminal case only on a certificate of division in opinion, and that this mode of review excludes the right of the United States to bring a question up for review in a criminal case in any other way. This argument must rest on the premise that the new court of appeals act conferred no new appellate jurisdiction on the Supreme Court, a premise that is wholly without foundation. While the appellate jurisdiction was curtailed by the new act in many respects, it was increased in others.

Before the court of appeals act, the Supreme Court had no power to review convictions of infamous crimes other

than capital crimes. Such power is expressly given by section 5 of the act. So too in any case in the circuit or district courts in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority is drawn in question, the appellate jurisdiction of the Supreme Court is extended because before the passage of the court of appeals act such cases could be reviewed in the Supreme Court only when they involved $5,000 or over. There is the same enlargement of jurisdiction with respect to cases in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States, where the question arises before a circuit or district court of the United States.

There is nothing in the rest of the statute, therefore, to show that the effect of the provision by which any case involving the construction or application of the Constitution of the United States is to be reviewed in the Supreme Court should be limited to cases which before the act were the subject of review in that court.

It may be conceded that the provision can not apply to a writ of error by the United States to a judgment of acquittal, but this exception grows out of the provision of the Constitution that no man shall be put more than once in jeopardy of life or limb. The immunity thus secured by the Constitution, however, has no application whatever in the case at bar. A man is never in jeopardy until after verdict upon a good indictment. (*United States* v. *Gilbert et al.*, 2 Sumner, 19, and cases therein cited.) There was no trial before a jury here, but the indictment was simply

found to be bad. To reverse that judgment and to put the defendants upon their trial, on the ground that the indictment is good under the Constitution, is not to put the defendants twice in jeopardy of life or limb.

Neither can it be said to be against the policy of the law to make such a provision. Heretofore, on a certificate of division, it has been permitted to the Supreme Court to examine the sufficiency of indictments, even though the circuit judge, whose opinion generally in case of a disagreement between him and the district judge is the judgment of the court, should be that the indictment was bad and should be quashed. The effect of the clause of section 5, which we have been discussing, is to give a review of constitutional questions arising in the consideration of an indictment, whether the judges who pass on the same in the court below differ or agree. We conceive that the effect of this clause is also to give to the Supreme Court appellate jurisdiction in cases where there has been a conviction of a misdemeanor, provided only that the conviction involves the application of the Constitution.

We respectfully submit that the writ of error should not be dismissed.

WM. H. TAFT,
Solicitor-General.

Supreme Court, U.S.
FILED
JAN 6 1892
JAMES H. MCKENNEY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1891.

Term No., 1454.

UNITED STATES, PLAINTIFF IN ERROR,

vs.

GEORGE SANGES, DENNIS ALEXANDER, ISAAC SMITH, AND CHARLES PORTER.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

Brief in reply to the brief of the Solicitor General.

The Solicitor General rests the right in this case solely upon the ground that the United States has a right to a writ of error in "any case," except after acquittal in a criminal case, "that involves the construction or application of the Constitution of the United States."

This involves the inquiry as to how far the act of 1891 extends the jurisdiction of the Supreme Court over new cases and as to how far that act is merely distributive of an existing jurisdiction between the Supreme Court and the newly constituted circuit court of appeals.

It is conceded that as to civil cases its jurisdiction is widened as to those cases in which the constitutionality of an act of Congress is drawn in question or of an act of the State legislature or a State constitution is drawn in question in a circuit court. This is not, properly speaking, any extension over a new class of questions, but the same class broadened by breaking down the jurisdictional limit.

This, it is conceived, is not the conferring of a new jurisdiction, strictly speaking, but only an extension of a jurisdiction already existing.

Now, as to criminal cases, it is admitted that there is something conferred in the way of jurisdiction by the act. Prior to it this Court could only have such upon a division of opinion or upon a *habeas corpus* after a conviction resting upon a lack of jurisdiction and not in the manner of an exercise in the court below. Of course, under neither of these was there full review given by this act.

It is contended that this is the only new jurisdiction given the Court. With this exception as to criminal cases and the broadening of a jurisdiction already existing in the civil cases mentioned, it is conceived that the purpose of this act was not so much to confer as to distribute jurisdiction, and it is contended for the reasons herein stated that the only application of this statute as to criminal cases is one in favor of and not against defendants in criminal cases.

The reasons are these:

First. The only mention of the right with reference to criminal cases *eo nomine* is "in case of conviction."

Second. The general words of the statute are to be construed with reference to the old law, under which no such right is given to the United States, and its general terms are to be restricted by the special words upon the particular subject. Having no jurisdiction over this case before, one is now given of a certain character, and its enumeration must be an exclusion of any other than the one provided. The broad language in the other parts is to be taken with reference to and merely embodying the old. The new being an extension and the extension itself specified and particularized is not be amplified by the more general language. Therefore, in order to make this clause consistent with the general terms of this act and to bring the act into harmony with the previous adjudications of this Court with reference to criminal reviews, it must be held that this applies only to civil causes regardless of the amount.

The rule invoked is thus stated in Felt *vs.* Felt, 19 Wis., 3:

> "It is a well-settled rule of construction that specific provisions relating to a particular subject must govern in respect to that subject as against general provisions in other parts of the law which might otherwise be broad enough to include it."

Attention is also called to the statement of the rule by Sir Samuel Romilly in Pretty *vs.* Sally, 26 Beavan, 610.

As illustrations of the same, Long *vs.* Culp, 14 Kansas, 412, opinion by Brewer, J.; also State *vs.* Trenton, 38 N.

J. Law, 64; State *vs.* Goetze, 22 Wis., 348; Griffith *vs.* Carter, 8 Kansas, 565.

It is respectfully submitted that the writ of error should be dismissed.

WILLIAMS C. GLENN,
A. H. GARLAND,
H. J. MAY,
For the Motion.

Office Supreme Court U. S.
FILED.
JAN 11 1892
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CLERK.

Case No. 14928.

In the Supreme Court of the United States.

OCTOBER TERM, 1891.

THE UNITED STATES, PLAINTIFF in error,
vs.
GEORGE SANGES, DENNIS ALEXANDER, Isaac Smith, and Charles Porter.
} Term No. 1454.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

BRIEF FOR THE UNITED STATES.

W. H. H. MILLER,
Attorney-General.
WM. H. TAFT,
Solicitor-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1891.

THE UNITED STATES, PLAINTIFF in error,
vs.
GEORGE SANGES, DENNIS ALEXANDER, Isaac Smith, and Charles Porter.
Term No. 1454.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This is a writ of error to a judgment of the circuit court of the United States for the northern district of Georgia. The judgment sustained a demurrer to an indictment and quashed the same. The indictment charged

that on November 11, 1890, one Joseph Wright, in the northern district of Georgia, was returning from Atlanta, where he had appeared and testified before the United States grand jury for that district, in obedience to a subpœna commanding him to do so, as to violations of the internal-revenue laws of the United States by William Teasley and Dennis Alexander, in that they had carried on the business of retail liquor dealers without having paid the special tax required by law, and that said Wright was not yet discharged from the order of said subpœna; that thereupon George Sanges, Dennis Alexander, Isaac Smith, and Charles Porter conspired to injure and oppress Joseph Wright in the free exercise and enjoyment of a right and privilege then and there secured to him, the said Joseph Wright, by the Constitution and laws of the United States; and because he, the said Joseph Wright, was then and there in the free exercise and enjoyment of said right and privilege, to wit, the right and privilege as a citizen of the United States t inform the proper officers of the United States of vio tions of its internal revenue, and of attempts to defr the United States by the said William Teasley and Den Alexander; and the right and privilege of a citizen of t United States to aid in preventing such attempts to defraud the United States of its revenues and to prosecute such cases; and the right, privilege, and duty of said Wright, as a citizen of the United States, to obey the process of its courts and to comply with and answer the subpœnas of said United States court, and in obedience thereto to appear and testify as a witness, freely, fully, and truthfully, before

the said United States grand jury in Atlanta for the northern district of Georgia, to any matter pending therein criminating or tending to criminate said William Teasley, said Alexander, and any other persons, for violating the internal-revenue laws of the United States, and to return to his home in peace and safety after so testifying; and the right and privilege of the said Joseph Wright as a citizen of the United States to be secure, safe, and unmolested in his person and exempt from violence for having exercised and enjoyed the said rights, privileges, and immunities hereinafter enumerated secured to him, the said Joseph Wright, as a citizen of the United States by the Constitution and laws of the United States; and that the said defendants having so conspired did, in pursuance of such conspiracy, on the 11th day of November, 1890, at night, then and there together on the highway assault the said Joseph Wright with deadly weapons, and with malice aforethought unlawfully kill said Joseph Wright

To the indictment the defendants demurred on several grounds, only two of which were relied upon. They are—

> Fourth. Because there are no such rights or privileges secured to the party conspired against, by the Constitution and laws of the United States, as those set out in the indictment.
>
> Fifth. Because, on the facts alleged in said indictment, there is no crime or offense set out of which the courts of the United States can take cognizance.

The indictment is drawn under sections 5508 and 5509 of the Revised Statutes, which are as follows:

> SEC. 5508. If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in

> the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years; and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.
>
> SEC. 5509. If, in the act of violating any provision in either of the two preceding sections any other felony or misdemeanor be committed, the offender shall be punished for the same with such punishment as is attached to such felony or misdemeanor by the laws of the State in which the offense is committed.

In the language of the learned justice who decided the case below (Record, p. 7):

> The questions presented by this demurrer are: Does an indictment which charges the defendant with conspiring to oppress and injure a citizen of the United States in the exercise of his right to appear and testify as a witness before the grand jury of a Federal court, and also with having in pursuance of such conspiracy, murdered him because of his having exercised that right, describe an offense within the sections referred to? Is the right to appear as a witness, and to testify before a grand jury of a Federal court, a right secured by the Constitution and laws of the United States in the sense in which that language is employed in those sections?

ARGUMENT.

By Article III, section 1, of the Constitution the judicial power of the United States is vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish.

By the ninth clause of section 8 of Article I, Congress is givenpower to constit ute tribunals inferior to the Supreme Court.

By section 8 of Article I, Congress is given power to lay and collect taxes, imposts, and excises; and by the eighteenth clause of the same section it is given power to make all laws which shall be necessary and proper to carry into execution the foregoing powers, and all other powers vested by the Constitution in the Government of the United States, or in any officer thereof.

By the second section of Article III, the judicial power of the United States extends to all cases in law and equity arising under the Constitution and laws of the United tates and the treaties made under their authority, and to ntroversies to which the United States shall be a party.

It hardly needs the statement that from these constitu- onal provisions Congress derives the power, first, to es- tablish circuit and district courts; second, to pass laws providing for the collection of the internal-revenue tax; and third, as incident to that power, to pass laws denouncing as crimes and misdemeanors the violation or evasion of any revenue tax law.

It is further provided by the Constitution that in all prosecutions provided by law for such violations of the internal-revenue law as may be made infamous crimes, a

grand jury shall be organized to present an indictment upon the same before a trial can be had. This follows from the fifth article, providing that no person shall be held to answer for a capital or otherwise infamous crime unless upon presentment or indictment by a grand jury.

It will not be disputed, therefore, that it is not only within the constitutional power of Congress to create the circuit and district courts of the northern district of Georgia, but also to provide for the organization of the grand jury therein, and to give to those courts the power to subpœna witnesses to appear before them and before the grand jury for the purpose of investigating violations of the internal-revenue law. This has been done. Title 13, chapter 15 of the Revised Statutes, sections 800 to 822, provides for the impaneling of petit and grand juries in courts of the United States. Title 13, chapter 17, on evidence, from section 858 to 881, inclusive, provides for the examining of witnesses. Section 876 provides that subpœnas from courts may run not only in the district of th court, but into any other district, except that in civ causes witnesses shall not be liable to subpœna who li out of the district at a greater distance than 100 miles fro the place of holding court. Section 877 provides as fo lows:

> Witnesses who are required to attend any term of the circuit or district court of the United States shall be subpœnaed to attend to testify generally on their behalf, and not to depart the court without leave thereof or of the district attorney; and under such process they shall appear before the grand or petit jury, or both, as they may be required by the court or district attorney.

It is manifest, and will hardly be denied, that a witness who is compelled to attend court under a subpœna, to testify before the United States grand jury, is discharging a duty which Congress has imposed upon him by virtue of its constitutional powers. He is exercising a function which is wholly dependent upon the Constitution and laws of the United States. His duty to attend court as a witness before a grand jury of the United States had no existence before the adoption of the Constitution and the passage of laws by Congress establishing courts and providing for their procedure. It was and is not a duty owing by him to the State. It was and is a duty created by the Constitution and laws of the United States. If it is his duty under the Constitution and laws to obey the process of subpœna, and to appear and testify before a grand jury of the United States, it is necessarily his right, when under obligation to appear as a witness, so to do without interference or molestation by anyone. Such right is correlative to the obligation owing to the United States Government.

The law which compels him to attend before the grand jury, *proprio vigore* confers upon him the right to discharge that duty without molestation. That right is therefore wholly dependent upon the law which imposes the duty, and as the law which imposes the duty is a law of the United States, passed in accordance with the Constitution of the United States, it follows that the right to attend before a grand jury in answer to a lawful subpœna is a right secured by the Constitution and laws of the United States. This brings a conspiracy to oppress a man in the enjoyment of such a right, or to injure him for

having exercised such a right, exactly within the letter of section 5508.

The learned Justice who delivered the opinion of the court below gave much consideration to the distinction which has been made in many authorities between rights, the abridgment of which by State authority or by national authority is forbidden in the Constitution of the United States, but which rights antedate the Constitution and have not their origin therein, and those strictly Federal rights which grow out of or are created by the Constitution and the laws passed in accordance therewith. If we follow the reasoning of the learned Justice it is this: He says that the right to attend court and give evidence, if a right at all, existed before the Constitution, and was not conferred by that instrument.

Here we respectfully take issue with him. The particular right, the conspiracy against the enjoyment of which is charged in the indictment, is the right to appear without molestation, when under lawful subpœna requiring it, before a United States grand jury to testify as to the infraction of a United States internal revenue law. Certainly before the Constitution, which created the United States, and before the passage of those laws which made it an offense to violate the internal-revenue laws of the United States, there was no duty on the part of any one to appear before the grand jury and testify to such infractions, and therefore there was no right to discharge such duty without molestation. The duty to appear and testify, and the consequent right to do so without let or hindrance, are therefore wholly dependent upon the Federal Constitution and the Federal law.

We submit, therefore, that the distinctions which are made in the *Cruikshank case* (92 U. S., 542) and the *Civil Rights case* (109 U. S., 3) have no bearing whatever on the case under consideration at bar. Indeed, in the *Cruikshank case*, the very distinction between the class of cases in which the learned Justice in the circuit court below included the right to testify in the United States court, and the class of cases in which it properly belongs, as we with deference submit, is brought out by Chief Justice Waite. In that case the first and ninth counts stated the intent of the defendants to have been to hinder and prevent the citizens named in the free exercise and enjoyment of their lawful right and privilege to peacefully assemble together with each other and with other citizens of the United States for a peaceful and lawful purpose. It was claimed that this was a right secured under the Constitution of the United States by the first amendment to the Constitution, which prevents Congress from abridging the right of the people to assemble and to petition the Government for redress of grievances. Said Chief Justice Waite, page 552:

> The particular amendment now under consideration assumes the existence of the right of the people to assemble for lawful purposes, and protects it against encroachment by Congress. The right was not created by the amendment; neither was its continuance guaranteed, except as against Congressional interference. For their protection in its enjoyment, therefore, the people must look to the States. The power for that purpose was originally placed there, and it has never been surrendered to the United States. The right of the people peaceably to assemble

for the purpose of petitioning Congress for a redress of grievances, or for anything else connected with the powers or duties of the National Government, is an attribute of national citizenship and as such under the protection of, and guaranteed by, the United States. The very idea of a government, republican in form, implies a right upon the part of its citizens to meet for consultation in respect to public affairs and to petition for a redress of grievances. If it had been alleged in this count *that the object of the defendants was to prevent a meeting for such a purpose, the case would have been within the statute, and within the scope of the sovereignty of the United States.* Such, however, is not the case. The offense, as stated in the indictment, will be made out if it be shown that the object of the conspiracy was to prevent a meeting for any lawful purpose whatever.

The first amendment forbids the abridgment by Congress of the right of the people to peaceably assemble for any purpose. That right, however, it was held by the court existed before the Constitution, and was not in the sense of section 5508 secured thereby; but it was also held, as we have seen, that where the right conspired against was a right to assemble for national or Federal purposes, that was a right within section 5508. So in this case, while the right to attend court and to testify may have existed before the Constitution of the United States was adopted, and the laws passed in pursuance thereof, the right to testify in the United States court is a Federal right, incident to national sovereignty, and protected by national law, and so within section 5508.

Section 5508 has been under discussion in this court in two cases. In the case of *Ex parte Yarbrough* (110 U.

S., 653), and in the case of *United States* v. *Waddell* (112 U. S., 76). In the first of these cases it was held that a conspiracy to injure a man for having exercised the right to vote at a Congressional election was a conspiracy to deprive him of a right secured to him by the Constitution and laws of the United States, in view of the constitutional provision that the members of the House of Representatives shall be voted for in the States by the electors of those States having the qualification to vote for the members of the most numerous branch of the legislature of the State. In the second case, it was held that a conspiracy to drive off from a section of public land a citizen of the United States who had settled upon the land and was proceeding to perfect his title under the land laws of the United States by such settlement was a conspiracy to deprive him of a right secured to him by the Constitution and laws of the United States. In *United States* v. *Waddell*, Mr. Justice Miller says, with reference to section 5508, and the facts of the case then before the court, as follows:

> In reference to this latter qualification, the statute itself is careful to limit its operation to an obstruction or oppression in "the free exercise of a right or privilege secured by the Constitution or laws of the United States, or because of his having exercised such rights."
>
> The protection of this section extends to no other right, to no right or privilege dependent on a law or laws of the State. Its object is to guarantee safety and protection to persons in the exercise of rights dependent on the laws of the United States, includ-

ing, of course, the Constitution and treaties as well as statutes, and it does not, in this section at least, design to protect any other rights.

The right assailed, obstructed, and its exercise prevented or intended to be prevented, as set out in this petition, is very clearly a right wholly dependent upon the act of Congress concerning the settlement and sale of the public lands of the United States. No such right exists or can exist outside of an act of Congress. The Constitution of the United States, by Article IV, section 3, in express terms vests in Congress "the power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States." One of its regulations—the one under consideration—authorizes a class of persons, of whom Lindsey is one, to settle upon its land, and, on payment of an inconsiderable sum of money and the written declaration of intent to make it a homestead, he is authorized to reside there. By building a house and making other improvements on it and residing there for five years consecutively, which, under the statute and under that alone, he has a right to do, and paying the fees to the officer necessary to its issue, he acquires a patent or title in fee to the land.

But his title is dependent on continued residence of himself or family. By the original entry he acquires the inchoate but well-defined right to the land and its possession, which can only be perfected by continued residence, possession, and cultivation for five years. His right to continue this residence for five years for that purpose is dependent upon the act of Congress. His right to the patent, after this is done, rests exclusively on the same foundation.

The right here guaranteed is not the mere right of protection against personal violence. This, if the

result of an ordinary quarrel or malice, would be cognizable under the laws of the State and by its courts. But it is something different from that. It is the right to remain on the land in order to perform the requirements of the act of Congress, and, according to its rules, perfect his incipient title.

Whenever the acts complained of are of a character to prevent this, or throw obstruction in the way of exercising this right, and for the purpose and with intent to prevent it, or to injure or oppress a person because he has exercised it, then, because it is a right asserted under the law of the United States and granted by that law, those acts come within the purview of the statute and of the constitutional power of Congress to make such statute. In the language of the court in *Ex parte Yarbrough:* "The power arises out of the circumstance that the function in which the party is engaged, or the right which he is about to exercise, is dependent on the laws of the United States. In both of these cases it is the duty of that Government to see that he may exercise this right freely, and to protect him from violence while so doing, or on account of so doing."

The language here used has exact application to the case at bar. Joseph Wright, when in attendance upon the court and testifying before the United States grand jury under a subpœna, was engaged in a function wholly dependent upon the laws of the United States. As we have said above, the obligation which he was under to go to the court and to testify included in it necessarily the right, so long as that obligation existed, to discharge it without hindrance or molestation. As Lindsay, in the Waddell case, had the right to remain on the land in order to perform the requirements of the act of Congress, so here

Joseph Wright had the right to go to court and appear before the grand jury in order to perform the requirement of his subpœna issued in accordance with the Constitution and laws of the United States. In the language of Mr. Justice Miller, it is the duty of the Government of the United States "to see that he may exercise this right freely, and to protect him from violence while so doing, or on account of so doing."

The view of the learned Justice in the court below was that a duty to testify was not a right to testify, or to be safe in testifying, because a right was something which a man who had it might exercise, or refrain from exercising, as he would. The duty of a citizen to testify is correlative to the right of the Government to have him testify. We may concede for the purpose of argument, that there is no right on the part of a witness to testify when not under obligation to do so. If the Government does not or the parties do not see fit to have his testimony he has no right to give it. Our contention is, that when the obligation by the issuance of lawful process is imposed upon a man to testify, such obligation carries with it the right to testify without hindrance or molestation.

A command to do a thing includes the authority to do it. A command to testify, therefore, includes the authority or the right to testify. The two are inseparable. An obligation arising under the law to appear and attend as a witness carries with it as part of the obligation, and as necessary in its creation, the authority and the right to do that which is required, in security, so far as the power of the Government can guarantee such security. The law which im-

poses the obligation, in the words giving the command, secures the right; as every duty imposed by a free government on the citizen implies a corresponding obligation from the government to the citizen. Mutual and reciprocal right and obligation between the citizen and the government are of the very essence of free institutions.

We respectfully dissent from the view which the learned Justice in the court below seemed to take of section 5508, in holding as he did, substantially, that the right secured by the Constitution and laws of the United States referred to in that section must be expressly secured either by apt language in the Constitution, or by the words of the statute passed in pursuance of that instrument. We contend that any right which is Federal in its character, and is properly inferable from any obligation imposed upon a citizen of the United States by the laws or the Constitution of the United States is a right secured thereby. In the case of *In re Neagle* (135 U. S., 1) the question was whether a deputy marshal, who had been ordered by the Attorney-General to accompany Mr. Justice Field and to protect him from a threatened attack by a suitor in the United States court because of an official act of Justice Field as a judge of that court, and who killed the assailant of the Justice, and was arrested therefor by the State authorities of California, was "in custody for an act done or omitted in pursuance of a law in the United States," which under section 753 of the Revised Statutes entitled him to the writ of habeas corpus in the United States court.

There was no law on the statute book or in the Constitution expressly authorizing the Attorney-General to direct

the deputy marshal to accompany a justice of the Supreme Court and protect him from such attacks, nor was there any statute directly authorizing the United States marshal to take such action. This court, however, held that the expression "a law of the United States" did not require the express authority of a statute. Said Mr. Justice Miller:

> In the view that we take of the Constitution of the United States, any obligation fairly and properly inferable from that instrument, or any duty of the marshal to be derived from the general scope of his duties under the laws of the United States, is a law within the meaning of this phrase. It would be a great reproach to the system of government of the United States, declared to be within its sphere sovereign and supreme, if there is to be found within the domain of its powers no means of protecting the judges in the conscientious and faithful discharge of their duties from the malice and hatred of those upon whom their judgments may operate unfavorably.

And so, by close analogy in this case, a right is secured by the Constitution and laws of the United States when it is a right fairly and properly inferable from the Constitution. It certainly would be a great reproach to the system of government of the United States, declared to be within its sphere sovereign and supreme, if there is to be found within the domain of its powers no means of protecting witnesses in the conscientious and faithful discharge of their bounden duty to tell the truth, the whole truth, and nothing but the truth, from the malice and hatred of those upon whom their testimony may operate unfavorably.

There was found in the Constitution and laws of the United States, without express words conferring it, the authority and duty in the Executive to protect the judges of the United States courts. The authority and duty of the Executive implies the existence of a right of the judge to such protection. It must follow, therefore, that Terry and his wife, if they had killed Mr. Justice Field in furtherance of a conspiracy, would have been liable to punishment under sections 5508 and 5509, because they would have been conspiring to deprive him of the right he had to protection against injury or oppression for the faithful discharge of his judicial duty unless it should be held that husband and wife could not conspire together.

A witness is only an humbler instrument than a judge in the administration of justice. The same authority which a United States marshal has to protect a judge he has to protect a witness, and the same right a judge has to the protection of the Government, a witness has.

The right to discharge their respective duties without molestation grows out of the existence of those duties.

The learned Justice who decided the case below intimates, although he does not decide, that section 5508 applies only to the right to vote, and could not properly therefore extend to the right to testify. It is difficult to see how such a construction can be put upon section 5508 in view of the decision of the case just referred to (*United States* vs. *Waddell*), where the right was not in any sense akin to that of suffrage, but was the right of the homesteader to possession of the public land pending his acquiring a patent.

It was decided in the case of *Baldwin* vs. *Franks* (120 U. S., 678) that section 5508 did not punish a conspiracy to deprive one who was not a citizen of the United States of a right secured by the Constitution and laws of the United States, the court holding that the word "another" in the second clause referred to "citizen" in the first. But there is not an intimation that section 5508 is to be limited to the right of suffrage. The decision only limits the application of the section to civil rights secured to citizens of the United States by the Constitution and laws of the United States. Any right secured to a man by the Constitution and laws of the United States is a civil right, and if he is a citizen he is entitled to the protection of section 5508 by the punishment of a conspiracy to deprive him of such right.

The learned Justice refers to the report of the Attorney-General for 1890 as a concession by him that section 5508 applied only to the right of suffrage. The language upon which the learned Justice relied is as follows:

> It is certainly an anomaly in government that those who have committed murders for the purpose of stopping prosecution in the Federal courts should not only not be punished, but not even be put upon trial, although in at least two cases in one district during 1890 well known. Yet such is the fact. It is needless to say that the Federal courts have no adequate jurisdiction of these offenses.
>
> Section 5509 of the Revised Statutes provides that if any person attempts, by intimidation, threats, etc., to prevent any citizen from exercising the right of suffrage, and in so doing commits a felony, or if two or more persons conspire to debar any person from

the enjoyment of any of his civil rights and in so doing commit a felony, such felony shall be punished according to the laws of the State wherein the same is committed.

If section 5509 were so broadened as to make any felony, committed while in the act of violating any statute of the United States, triable in the United States courts and punishable according to the laws of the State wherein the same is committed, it would greatly help in the administration of justice.

So long as persons who kill officers, witnesses, or jurors for the purpose of impeding the administration of justice can only be tried and punished in a Federal court as for a minor offense, the administration of the United States laws, and the laws themselves in many districts, will have little respect.

It will be noticed that the Attorney-General here summarizes the effect of section 5509 in its application to 5507 and 5508, "either of the two preceding sections," and distinctly states that, in connnection with 5508, it covers "any civil right," meaning, of course, any Federal civil right.

There is here certainly no express statement that section 5509 covers attempts only against the right of suffrage, and we submit there is nothing from which such a view can be fairly inferred. What the Attorney-General was pointing out was the fact that there is no adequate remedy provided in the Federal law for crimes committed in resistance to Federal officers when the crime is not accompanied by a conspiracy. As illustrating such inadequacy, reference may be made to section 5399, where the utmost punishment allowed for the obstruction of public justice by

force, even though it result in killing a court officer or witness, is a fine of not over $500, or imprisonment not exceeding three months, or both. It would certainly be strange if the Attorney-General, in the face of the case of *United States* vs. *Waddell*, should intimate to Congress that the right protected by section 5508 was limited to the right of suffrage. He clearly had no such intention.

Another objection suggested by the learned justice to a construction of section 5508 which should include as one of the rights therein referred to, the right to testify without molestation, is section 5406 of the Revised Statutes. Section 5406 is as follows:

> If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror, each of such persons shall be punished by a fine of not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, not less than six months or more than six years, or by such fine and imprisonment.

Without arguing, we respectfully suggest that the indictment under consideration is good under this section.

Unquestionably this section, 5406, is a specific provision for the punishment of a conspiracy to deprive a witness of his right to testify in a United States court, or to injure and oppress him in the exercise of that right, or to injure him for having exercised it. The fact that the same act is punishable under two different sections does not require us to exclude the act from the operation of either. It is said that this is a punishment provided for the protection of the Government, and not of the witness; that the obligation to testify is an obligation to the Government, rather than a right which the witness may exercise or decline to exercise. Herein we are again at issue with the learned Justice on the same point. It is true that the right of the witness to testify is not for his own benefit; but, given the lawful and binding obligation to testify, there is implied in that obligation the right to discharge it free from molestation or hindrance. Section 5406 is an express recognition of that right, which arises not by virtue of section 5406, but grows out of the statutory obligation imposed on the witness when under subpœna to present himself at court and to testify as he is required to testify.

Section 5508 was first made the law in 1870 (act of May 31, 1870, sec. 5, vol. 16, Stat. L., p. 141), while section 5406 did not become the law until April 20, 1871 (act of April 20, 1871, chap. 22, sec. 2, vol. 17, Stat. L., p. 13). There is nothing, therefore, in their origin to show that Congress intended to cover different classes of cases by the two sections. Up to 1871, therefore, section 5406 was not in existence, and under section 5508 the right of a citizen of the United States under process of subpœna

from the United States court to discharge the obligation therein imposed upon him to testify without molestation was a right secured by the Constitution and laws of the United States and a conspiracy against the exercise of such a right was within section 5508. It will hardly be contended that the passage of section 5406 modified or amended section 5508. It only provided a less severe punishment for one class of crimes denounced in section 5508.

It is respectfully submitted that the decision of the circuit court in sustaining the demurrer was wrong and that the judgment should be reversed, and the defendants ordered to plead to the indictment.

W. H. H. MILLER,
Attorney-General.
WM. H. TAFT,
Solicitor-General.

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In the Supreme Court of the United States.

OCTOBER TERM, 1891.

THE UNITED STATES, PLAINTIFF IN ERROR,
vs.
GEORGE SANGES, DENNIS ALEXANDER, ISAAC SMITH, AND CHARLES PORTER.
No. 1454.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

MOTION TO ADVANCE.

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MOTION TO ADVANCE.

And now, November 30, 1891, comes the Attorney-General, on behalf of the plaintiff in error, and moves the court to advance the above-named case for hearing at the present term.

This is a writ of error to the circuit court of the United States for the northern district of Georgia to review a judgment of that court on demurrer quashing an indictment against George Sanges, Dennis Alexander, Isaac Smith, and Charles Porter, drawn under sections 5508 and 5509 of the Revised Statutes of the United States.

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The writ of error is prosecuted under section 5 of the court of appeals act of March 3, 1891, on the ground that this is a case which involves the construction or application of the Constitution of the United States.

The indictment charged the defendants with conspiring to deprive Joseph Wright of the free exercise and enjoyment of a right secured to him by the Constitution and laws of the United States, to wit, the right to inform the proper officers of the United States of violations of its internal revenue, and of attempts to defraud the United States by certain persons; to prosecute such violations of law, and to obey the process of its courts and to answer the subpœnas thereof to appear before such courts as a witness in such cases, the said Wright then being under subpœna to give testimony therein, and in furtherance of such conspiracy, with murdering the said Wright.

The indictment was demurred to, and the demurrer was heard by Mr. Justice Lamar and District Judge Newman. The demurrer was sustained, on the ground that the right to testify in the United States court, and to obey the subpœna of such court, without molestation, oppression, or assault therefor, is not a right secured by the Constitution and laws of the United States, and therefore that, irrespective of the constitutional validity of sections 5508 and 5509, the act charged in the indictment was not within the purview of those sections.

The first of these sections provides that if two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised

the same, they shall be punished, etc.; and the second provides that if in the act of violating the previous section any felony or misdemeanor be committed, the offender shall be punished for the same with such punishment as is attached to such felony or misdemeanor by the laws of the State in which the offense is committed.

The importance of the constitutional question herein raised can not be exaggerated. Upon it depends the right of the United States to effectively protect the witnesses, whom it is obliged to summon, from intimidation, assault, and murder because of the evidence which they are about to give in behalf of the United States in the prosecution of crimes. The case of *Logan et al.* vs. *The United States*, already advanced upon the docket of this court and set down for hearing on the 11th of January, involves an analogous question, that is, whether a murderous assault upon a person in the custody of the United States marshal for violation of a Federal law deprives that person of any right or immunity secured under the Constitution and laws of the United States.

We respectfully submit that the questions are so similar as to suggest the propriety of having this case set down for the same day and heard at the same time.

We therefore respectfully move the court to advance the case upon the docket for the present term and to set down the same for hearing upon the 11th of January if that suits the convenience of the court.

W. H. H. MILLER,
Attorney-General.